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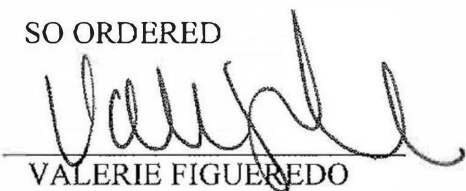
PENNSYLVANIA

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### VIA ECF

The Honorable Valerie Figueredo  
 United States District Court  
 Southern District of New York  
 500 Pearl Street, Courtroom 17A  
 New York, New York 10007

SO ORDERED



VALERIE FIGUEREDO  
 United States Magistrate Judge

Dated: June 7, 2023  
 Defendant B&H Foto Electronics Corp. is directed to respond to Plaintiffs' contentions in this letter that they have failed to produce their ESI records in full **by no later than 12:00 p.m. on June 8, 2023.**

June 7, 2023

Re: *Pierre v. City of New York, et al.*, No. 1:20-cv-05116-ALC-VF

Dear Judge Figueredo:

Plaintiffs respectfully request that the Court compel B&H Foto Electronics Corp. ("B&H") to produce their ESI records in full by **Friday, June 9, 2023** so that Plaintiffs have an opportunity to review such records ahead of B&H's 30(b)(6) deposition scheduled for Wednesday, June 14, 2023.

For over two months, Plaintiffs and B&H (together referred to as the "parties") have been discussing B&H's production of ESI records. Based on agreements<sup>1</sup> between the parties regarding the scope of ESI, on May 18, 2023, B&H identified 2,700 pages of records to be produced. B&H also designated Mr. Daskal as a 30(b)(6) to testify on behalf of the company on June 14, 2023. Plaintiffs explicitly emphasized that the deposition is being scheduled one month out specifically because the parties "need to resolve the ESI before then and have the documents in hand before the deposition."

On May 22, 2023, Plaintiffs followed up on the status of B&H's production of 2,700 ESI records. B&H responded "I hope to have the ESI in next day or two."

On May 23, 2023, Plaintiffs again asked B&H about the status of ESI production. B&H responded that they have the ESI in a zip folder and that it would be produced to Plaintiffs "far ahead of the 14th."

On the same day, Plaintiffs requested that the ESI be produced on a rolling basis so that Plaintiffs can "start reviewing and preparing" for the upcoming deposition. B&H responded that they would "likely be able to do that."

<sup>1</sup> B&H initially searched their custodians for specific search terms and found zero records. In the subsequent meet and confers, the parties determined that the volume of B&H's ESI is so minimal that the search terms were too restrictive. As a compromise, the parties agreed that B&H would produce all records from certain custodians to and from the NYPD without the use of search terms. On May 18, 2023, B&H reported that all such records amount to only 2,700 pages.



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On May 24, 2023, Plaintiffs again requested that B&H produce their ESI records and specifically requested that B&H produce the ESI “on a rolling basis starting this week so we can start our review.” Plaintiffs emphasized that we need time to review the records in order to prepare for the upcoming deposition. B&H agreed, stating “yes we will provide it on a rolling basis as soon as possible.”

On May 25, 2023, Plaintiffs again requested an update on ESI. B&H responded that “ESI is actively in process.” However, no ESI has ever been produced on a rolling basis or otherwise.

On May 26, 2023, Plaintiffs again emailed B&H requesting that ESI be produced immediately on a rolling basis “so I can start reviewing.” B&H again responded that “ESI is going through a process and will be turned over in pieces.” No ESI has ever been produced.

On May 30, 2023, Plaintiffs again requested an update on B&H’s production of ESI records. B&H responded that they are still “working on ESI.”

On June 1, 2023, Plaintiffs again requested ESI and emphasized “we are cutting it very close. Please provide at least some so we can get them on a rolling basis.” B&H responded, “it is in process.” No ESI has ever been produced.

On June 5, 2023, Plaintiffs again requested an immediate production of ESI records. B&H responded that they would have an update on that same day. Plaintiffs emphasized “we really need the ESI. Please send me anything you have ready today.” No ESI was ever sent.

On June 6, 2023, Plaintiffs again asked for the production of ESI records, stating “Please send ESI. We need it. Deposition is next week. Come on please!!” B&H advised that an ESI update would be provided. No update was provided.

As of today, June 7, 2023, no ESI has ever been produced by B&H on a rolling basis or otherwise. B&H’s 30(B)(6) deposition is scheduled to take place next week on Wednesday, June 14, 2023. Plaintiffs have not had the opportunity to review any ESI to prepare for the deposition.

On June 7, 2023, Plaintiffs requested that ESI be provided by 2pm or they would file the instant motion. B&H responded that no ESI would be produced today and instead they could make the ESI production “by mid next week.”

Plaintiffs have been severely prejudiced by B&H’s persistent delays in their ESI production. At this point, B&H is attempting to put Plaintiffs in a position where they have to conduct the 30(b)(6) deposition **before** B&H produces ESI.

B&H has been “in the process” of reviewing the 2,700 ESI records for weeks. Plaintiffs respectfully request that B&H be compelled to produce the ESI records by this **Friday, June 9,**



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**2023** – so that Plaintiffs can have at least two to three business days ahead of the Wednesday deposition to review the records and prepare for same. Plaintiffs explicitly reserve their right to recall Mr. Daskal should they not have enough time to review the ESI records or if none are produced ahead of the deposition.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Innessa M. Huot'.

Innessa M. Huot